

Congressman Adler's Bill to Help Hundreds of Veterans Blocked from Appeals Process by Arbitrary, Unfair Deadline Heard Before House Veterans' Affairs Subcommittee

Washington, DC – Today, Congressman John Adler's bill, the Fair Access to Veterans' Benefits Act, received a hearing before the House Veterans' Affairs (VA) Subcommittee on Disability Assistance and Memorial Affairs (DAMA). The Fair Access to Veterans' Benefits Act was drafted in response to a recent news report which detailed how two hundred veterans are being denied the chance to appeal for their benefits after missing a rigid and arbitrary deadline with the United States Court of Appeals for Veterans Claims (known as the Veterans Court). Worst of all, many of these veterans missed their deadlines due to service-related disabilities.

In April, Congressman Adler, the only New Jersey member of the House Veterans' Affairs Committee, wrote to House VA Chairman Bob Filner to request a Congressional hearing on the Broken VA Claims Process.

Below is full-text of the Congressman's remarks, as prepared for delivery:

I would like to thank Chairman Hall, Ranking Member Lamborn, and members of the subcommittee for the opportunity to testify on behalf of H.R. 5064, the Fair Access to Veterans Benefits Act. This subcommittee has been integral in ensuring that our veterans are receiving the benefits they deserve. I commend you on your leadership.

The need for H.R. 5064 came from a federal appeals court ruling in which a Korean War veteran, David Henderson, who suffers from paranoid schizophrenia, was denied benefits because his appeal was filed 15 days late. The deadline that Mr. Henderson missed was one that required filing an appeal within 120 days of the final notice from the Board of Veterans' Appeals, the highest administrative authority in the claims process.

Mr. Henderson served in the military from 1950 to 1952. He was discharged after being diagnosed with mental health problems and assigned a 100 percent disability rating, making him eligible for disability compensation. In 2001, Henderson sought an increase in compensation based on his need for in-home care. His claim was denied at the VA regional office, and the denial was upheld in 2004 by the Board of Veterans' Appeals.

Mr. Henderson appealed to the U.S. Court of Appeals for Veterans' Claims, but he filed his appeal 15 days too late. He tried but failed to get the court to reconsider, arguing that his

service-connected disability caused him to miss the deadline. The veterans' court rejected his argument and the U.S. Court of Appeals for the Federal Circuit agreed, in *Henderson v. Shinseki*, that the veterans' court was right to reject a late appeal.

My bill would require the U.S. Court of Appeals for Veterans' Claims to hear appeals by veterans of administrative decisions denying them benefits when circumstances beyond their control render them unable to meet the deadline for filing an appeal. The Fair Access to Veterans' Benefits Act would require the U.S. Court of Appeals for Veterans' Claims to excuse late filings if the veteran demonstrates "good cause" so that meritorious benefits claims are not denied their day in court. This bill also requires the Veterans' Claims Court of Appeals to reinstate untimely appeals already dismissed as a result of the court's failure to toll the filing period for good cause.

The veterans' claims process is extremely difficult to navigate, especially when doing so without the aid of an attorney or while suffering from a mental disability. While the Veterans' Claims Court of Appeals was intended to be informal and fair, the imposition of rigid deadlines has resulted in the denial of benefits for many veterans. Oftentimes, the reason these veterans missed the filing deadline was because of the very service-connected disabilities that entitle them to the benefits they are seeking. It is my hope that H.R. 5064 will help ensure that no veteran is denied disability benefits simply because they have missed an arbitrary deadline.

I would again like to thank Chairman Hall, Ranking Member Lamborn, and members of the subcommittee for allowing me the time to testify on this important matter. I would be happy to answer any questions you might have.